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DECISION



J. Cohen PL I

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-191725

DATE: June 26, 1978

MATTER OF: Montague Investment Co.

DIGEST:

1. Purchaser of item of surplus property claims that total cost and estimated weight of item were significantly overstated in IFB, and requests refund. Remedy under IFB's guaranteed description clause is foreclosed, since notice of alleged misdescription was not provided within clause's required time period.
2. Relief for alleged misdescriptions of total cost and estimated weight of item of surplus property is not available under IFB requirement that sales office use "best information available" in describing property. Total cost was described by former using activity, and record does not indicate that sales office was aware of alleged misdescription thereof in preparing IFB. In addition, although sales writer did estimate weight, that factor was not relevant to bid preparation.

Item No. 11 in surplus sales invitation for bids (IFB) No. 27-7191, issued by the Defense Logistics Agency's Defense Property Disposal Service (DPDS), Battle Creek, Michigan, described an aircraft fuel pump test machine with a "Total cost" of \$52,900, and an estimated total weight of 6,600 pounds. The basis for the \$52,900 figure was the "turn-in" document prepared by the former using activity. The weight was estimated by the sales writer at the item's location in Davisville, Rhode Island. Since the item was being sold as a unit and not as scrap, the estimated weight was considered relevant to potential bidders only for purposes of removal of the item.

Montague Investment Co. (Montague) was awarded item 11 based on its high bid of \$3,760, and removed the item on July 26, 1977.

By letter of December 14 to DPDS, Montague complained that the item's cost was actually \$11,000, not \$52,900, and that it weighed only 2,240 pounds. Montague requested a refund of \$2,978.23, the difference between the purchase price and the percentage of \$11,000 that the purchase price is of \$52,900.

Montague's request was denied by DPDS on the basis that Montague failed to meet the 30-day notice requirement of article 30 of the IFB's instructions, terms and conditions, entitled "Guaranteed Descriptions." Paragraph b(2) thereof provides in pertinent part:

"No adjustment will be made unless the Purchaser mails or otherwise furnishes to the Contracting Officer a written notice, within 30 calendar days from date of removal of the property, that the property is misdescribed * * * PROVIDED FURTHER THAT THE GOVERNMENT DOES NOT WARRANT OR GUARANTEE ANY OF THE FOLLOWING:

* * * * *

"(b) * * * the total cost of the property, the estimated total weight * * *

"(c) Estimates as to the weight of the property offered for sale by the 'unit' or by the 'lot.'"

Paragraph "c" of article 30 states:

"Notwithstanding any of the exceptions stated in subparagraph b(2) * * * the Government will accept return of any property determined to have been misdescribed, to a location specified by the contracting officer

at the Purchaser's expense, and refund to the Purchaser the purchase price or such portion thereof as the Government may have received, provided timely notice of misdescription has been furnished to the Contracting Officer in accordance with the requirements of such paragraph b(2) above."

The matter has been referred to our Office for consideration.

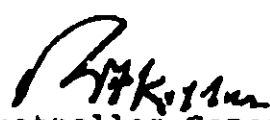
We agree with DPDS that remedy for the alleged misdescription under article 30 of the IFB is foreclosed because the item was removed by Montague on July 26 and notice was not given DPDS until December 14, more than 30 days later. In this connection, paragraph "c" of article 30 relaxes the general rule that when Government surplus property is sold with express disclaimers of warranty such as in sections (b) and (c) of paragraph b(2) of article 30, the successful bidder is not entitled to any refund of money paid for property because of any erroneous description. See 41 Comp. Gen. 185 (1961).

Nevertheless, we have stated that, under certain circumstances, relief may be available in this type of situation under General Condition 2 of the General Sale Terms and Conditions (Standard Form 114c, January 1970 ed.), which was incorporated by reference. Ansam Metals Corporation, B-188065, February 14, 1977, 77-1 CPD 107. General Condition 2 requires the sales office to use the "best information available" in describing property. We have held that General Condition 2 will insulate the Government from liability arising out of an inadvertent misdescription where the sales office is unaware that the property was misdescribed and used the best information available in describing the property in the sales document. 52 Comp. Gen. 698 (1973).

However, as stated above, the total cost indicated in the IFB was taken by the sales office from the former using activity's "turn-in" document. There is no

evidence in the record to indicate that the sales office knew of the alleged misdescription regarding the cost. In addition, although the item's weight was estimated for the IFB by the sales writer, it is not disputed that bids on the item were based on the total cost stated in the IFB, not the weight.

In view thereof, we cannot state that the best information available to the sales office to describe the property was not used. Contrast Ansam Metals Corporation, supra. Therefore, there is no valid basis to reform Montague's contract.


Deputy Comptroller General
of the United States